

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROHINDRANATH KANHOYE,

Plaintiff,

-against-

ALTANA, Inc., et al.,

Defendants.  
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**REPORT AND  
RECOMMENDATION**

CV 05-4308 (ENV)(WDW)

**WILLIAM D. WALL, United States Magistrate Judge:**

Before the court, on referral from District Judge Vitaliano (DE[51]), is the defendants' motion dated October 11, 2007 (DE [47]). For the reasons set forth herein, the undersigned recommends that the motion be granted in part and denied in part.

**DISCUSSION**

The defendants allege that the plaintiff has attempted to interfere with the administration of justice by making threats toward a witness. The plaintiffs seek (1) a conference before the court to address those threats; (2) an order of protection which prevents plaintiff from having any contact with the witness or the individual defendants; (3) an order admonishing plaintiff that any further threats by him will result in sanctions and criminal prosecution; and (4) permission for the defendants to rely on the facts alleged in the motion as after-acquired evidence against the plaintiff and to introduce those facts in their reply papers on the motion for summary judgement.

The defendants have provided no legal basis for the award of the relief sought as (2) and (3) above, and no reason to hold a conference, and I recommend that those three forms of relief be denied. As the defendants note in their motion, I denied an earlier motion for a "protective order"(DE[24]), noting that the plaintiff's threatened acts as set forth in that motion were already

prohibited by law. Then, as now, what the defendants really seek is not a protective order, as that term is used in the discovery process in Federal Court, but an order of protection, which is ordinarily obtained in state court. If the defendants know of a process by which they can obtain an order of protection from the District Court in a civil matter in federal court, they have not brought it to the court's attention. Nor can the court tell the plaintiff that continued threats will result in criminal prosecution, which require going through a well-defined, constitutionally mandated, process.

In making these recommendations, I do not minimize the seriousness of the plaintiff's alleged behavior, which has not been denied by the plaintiff, who has not opposed the motion. Nevertheless, some of the relief that the defendants seek is simply not available from this court in the context of a civil lawsuit. The defendants are free to pursue criminal charges against the plaintiff in an appropriate forum if they believe that a crime has been committed.

The defendants should be allowed to rely on the facts alleged in the motion as after-acquired evidence against the plaintiff to the extent that those facts and the arguments flowing from them be set forth in the defendants' reply papers on the motion for summary judgment. The plaintiff should, of course, be permitted to submit a sur-reply addressing those facts. The defendants may also be entitled to some form of sanctions, but, again, they have not set forth any specific basis on which those sanctions can be awarded.

## **OBJECTIONS**

A copy of this Report and Recommendation is being sent to counsel for all parties by electronic filing on the date below. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days. Failure

to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b) (1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York  
October 29, 2007

s/ William D. Wall  
WILLIAM D. WALL  
United States Magistrate Judge